

SYNOPSIS

CONSUMERS' SALES AND SERVICE TAX -- OFFICER LIABILITY -- BURDEN OF PROOF NOT MET -- Petitioner who, as the responsible corporate officer, admittedly knew that consumers' sales and service tax was not being remitted to the State of West Virginia but chose not to do anything to correct same will be held personally liable for the consumers' sales and service tax debt of the corporation. W. Va. Code § 11-15-17 and 110 C.S.R. 15, § 4a.5 (May 1, 1992)..

FINAL DECISION

The Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued an estimated consumers' sales and service tax assessment against the Petitioner.

This assessment was for the period of July 1, 1996 through June 30, 2002, for tax, interest, through October 15, 2002, and additions to tax.

Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked December 16, 2002, the Petitioner timely filed a petition for reassessment. See W. Va. Code § 11-10A-8(1) [2002].

Subsequently, written notice of a hearing on the petition was sent to the Petitioner and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10.

FINDINGS OF FACT

During the assessment period Petitioner admitted at hearing that she was indeed the responsible corporate officer who, although aware of the fact that the club was not remitting consumers' sales and service tax to the State of West Virginia, chose not to correct the unlawful practice. Tax Commissioner's counsel agreed at the hearing to accept filed returns in lieu of the estimated tax assessment.

DISCUSSION

The sole issue is whether the Petitioner has shown that she is not personally liable for the consumers' sales and service tax debt of the corporation.

Because Petitioner admitted that she was the responsible corporate officer of the corporation, who failed to correct the illegal practice of failing to remit consumers' sales and service tax to the State of West Virginia, she is determined to be personally liable for the consumers' sales and service sale debt of the corporation pursuant to W. Va. Code § 11-15-17 and 110 C.S.R. 15, § 4a.5 (May 1, 1992).

CONCLUSIONS OF LAW

Based upon all of the above it is **DETERMINED** that:

1. As the responsible corporate officer, who has admitted under oath that she was aware that the corporation was not remitting consumers' sales and service tax to the State of West Virginia, but failed and/or refused to correct same, Petitioner is determined to be personally liable for the consumers' sales and service tax debt of the corporation as mandated by W. Va. Code § 11-15-17 and 110 C.S.R. 15, § 4a.5 (May 1, 1992).

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the consumers' sales and service tax assessment issued against the Petitioner for the period of July 1, 1996 through June 30, 2002, should be and is hereby **MODIFIED** to reflect tax, interest thereon, updated through December 31, 2003, and additions to tax.

Interest continues to accrue on this unpaid consumers' sales and service tax at a daily rate until this particular tax liability is fully paid.